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In The

Supreme Court of the United States

OCTOBER TERM, 1962

No. 827

LILA MEYERKORTH, AND THE EMMANUEL ASSOCIATION, APPELLANTS,

V.

STATE OF NEBRASKA, FREEMAN DECKER, COMMISSIONER OF EDUCATION OF THE STATE OF NEBRASKA, HELEN HANIKA, COUNTY SUPERINTENDENT OF RICHARDSON COUNTY, NEBRASKA, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEBRASKA

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

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MOTION TO DISMISS

Pursuant to the provisions of Rule 16 (b) of the Revised Rules of the Supreme Court of the United States, the appellees respectfully move the Court to dismiss this appeal upon the ground that it does not present a substantial federal question for the following reasons:

I.

The Statutes of the State of Nebraska in question do not unconstitutionally infringe upon the appellants' right to religious freedom under previous rules of this Court.

II.

The questions raised by appellants have substantially been answered by previous decisions of this Court.

Respectfully submitted,

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BRIEF IN SUPPORT OF MOTION TO DISMISS

PROPOSITIONS OF LAW

I.

Religious rights are not beyond limitation.

Prince v. *Commonwealth of Massachusetts*, 321 U. S. 158, 88 L. Ed. 645.

II.

Statutes requiring compulsory education either in public or private schools, but where the private tutor

must hold a valid certification have been held to not involve a substantial federal question.

People v. *Turner*, 121 Cal. App. 2d, 861, 263 Pac. 2d 685, appeal dismissed, 347 U. S. 972, 98 L. Ed. 1112.

cf. Meyer v. *State of Nebraska*, 262 U. S. 390, 67 L. Ed. 1042.

Pierce v. *Society of Sisters*, 268 U. S. 510, 69 L. Ed. 1070.

ARGUMENT

I.

Religious Rights Are Not Beyond Limitation.

In the case of *Prince* v. *Massachusetts*, *supra*, plaintiff was convicted for violating the Massachusetts child labor law by acts said to be a rightful exercise of her religious convictions, i. e. selling of "Watchtower", a religious magazine, by her nine year old ward. In holding that the state, in exercise of its police power, could limit the rights of religious freedom as well as that of parenthood, this court stated at page 166:

"* * * * *.

"* * *. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds him claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does

not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. People v. Pierson, 176 NY. 201, 68 NE 243, 63 LRA 187, 98 Am St Rep 666. * * *.

"* * * * *."

II.

Statutes Requiring Compulsory Education Either In Public or Private Schools, But Where the Private Tutor Must Hold a Valid Certification Have Been Held to Not Involve a Substantial Federal Question.

The recent case of *People* v. *Turner*, 121 Cal. App. 2d 861, 263 P. 2d 685, concerned the conviction of adults for failure to send three children to public school. The California Supreme Court affirmed the conviction and decided that the state's compulsory education law did not unconstitutionally deprive parents of the right to determine how and where their children should be educated. It is interesting to note that the California statute provides that a tutor may be hired to teach children at least three hours a day, between the hours of 8 a.m. and 4 p.m., for one hundred seventy days each calendar year. The tutor, however, must hold a valid state teaching credential for the grade actually being taught. The court went on to point out that at the time of its decision only eleven of forty-eight states permitted home instruction by parents or tutors and that except in two states the home instruction was specifically regulated in areas such as qualifications of the tutor and hours instructed.

The court stated:

"* * * * *

"We have been unable to find a single case in which it has been held that so-called compulsory at-

tendance statutes are rendered unconstitutional and void merely by reason of a failure to recognize home instruction as an alternative to attendance in a public school.

"* * * * *"

Attempt was made to get the case before the United State Supreme Court which Court dismissed the appeal for the want of a substantial federal question, two justices being of the opinion that probable jurisdiction should be noted.

While the case of *Meyer* v. *State of Nebraska, supra*, decided that a state could not require subjects be taught in public and private schools in the English language only, it has also long stood for the proposition relied upon by the states that the state could require compulsory attendance at some school and make reasonable regulations for all schools; the court stated at page 402:

"* * * * *

"The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. * * *

"* * * * *"

While the case of *Pierce* v. *Society of Sisters of Holy Name, supra*, established that a state could not require children to attend public schools only, it is clear from the statutes involved in the present case that no such question is here involved, but that in fact the state has been particularly careful to guarantee equal protection of the laws to private and parochial schools together

with public schools. Section 79-1701, Reissue Revised Statutes of Nebraska 1943, provides in part:

> "All private, denominational, and parochial schools in the State of Nebraska, and all teachers employed or giving instruction therein, shall be subject to and governed by the provisions of the general school laws of the state so far as the same apply to grades, qualifications, and certification of teachers and promotion of pupils. * * *."

Section 79-1702, Reissue Revised Statutes of Nebraska 1943, provides:

> "No person shall be employed to teach or teach in a private, denominational, or parochial school who has not obtained a teacher's certificate entitling such teacher to teach corresponding courses or classes in public schools where the children attending would attend in the absence of such private, denominational, or parochial school.

Section 79-1703, Reissue Revised Statutes of Nebraska 1943, provides:

> "Nothing in sections 79-1701 to 79-1704 contained shall be so construed as to interfere with religious instruction in any private, denominational, or parochial school."

The texts of said statutes are contained in full in appellants' Jurisdictional Statement, Appendix C, p. 52.

CONCLUSION

Appellees respectfully contend that the brief resume of cases from this Court plus the Nebraska Statutes cited, establish that the contentions of appellants are not sufficient to require plenary consideration by this Court

in light of the rules already firmly established by the Court; we therefore respectfully pray that this appeal be dismissed for lack of substantial federal questions.

Respectfully submitted,

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